

On libido and promiscuity, law is more liberal than society

Manoj Mitta, TNN Sep 26, 2012, 12.19AM IST

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NEW DELHI: Law is said to lag behind society. A case in point is the longstanding struggle to make law catch up with the increasing social acceptance of homosexuality. But when it comes to the larger issue of sexual freedom, society seems to be lagging behind law.

This paradox is evident from the popular tendency to display moral outrage over the sexual affairs of prominent persons. Little do people realize that their blanket disapproval is more retrograde than the provision of adultery in the Indian Penal Code (IPC), enacted way back in 1860.



(Homosexuality)

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Consider the care taken by it to accommodate the natural instincts of libido and promiscuity in the definition of adultery, which pertains to sex between two mutually consenting adults. For all the patriarchal notions betrayed by it, Section 497 IPC was - and still seems to be - ahead of its times in excluding several forms of adultery from the ambit of this criminal offence.

- A married man can commit adultery with impunity if his partner is an unmarried woman, divorcee or widow.

- In the event of adultery with a married woman, the man would be exempt from punishment if he had committed it with the consent of her husband.

- A married woman is conferred even greater immunity as she can commit adultery with any man, irrespective of his marital status, without any criminal liability to herself.

- Nobody can ever invoke Section 497 against their own spouse. The adulterous wife for that matter cannot be accused of even abetting the crime. Conversely, if she is the aggrieved party, the wife can never initiate criminal proceedings against the adulterous husband or his partner.

The only remedy that aggrieved spouses have against each other is civil in nature. The Nehru government introduced the civil remedy in 1955 while codifying the Hindu personal law. Adultery has been provided as one of the grounds available to either spouse for seeking judicial separation or divorce.

As a corollary, the National Commission for Women has since made the radical recommendation in 2006 that adultery should not be treated as a criminal offence in any circumstances and it should instead be transformed into a civil wrong, arising from a breach of trust. The absence of any follow-up action on the part of the government to generate a consensus in society has however withheld this long overdue legal reform.

The penalty of imprisonment up to five years under the existing criminal provision is reserved exclusively for the man who commits adultery with a married woman, that too without her husband's consent. Even so, the criminal action can be initiated under Section 497 only by the cuckolded husband.

Despite its gender inequities, the constitutionality of this provision has been upheld twice by the Supreme Court. But on both occasions, Yusuf Abdul Aziz vs Union of India (1954) and

Sowmithri Vishnu vs Union of India (1985), the legal discourse was confined to the rationale behind the various ways in which Section 497 IPC discriminated between men and women in the context of adultery.

The issue today is not so much about bringing gender parity in the scheme of Section 497 as about doing away with the provision altogether. It is fundamentally flawed as it regards consensual sex as a criminal offence. Not for nothing have most European countries decriminalized adultery. India can do the same if its society adopts a more enlightened attitude to libido and promiscuity.

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Rajesh Patnaik (India)

28 Sep, 2012 01:59 PM

This statement is wrong: "Conversely, if she is the aggrieved party, the wife can never initiate criminal proceedings against the adulterous husband or his partner." The wife can file a case if her husband has NOT got PERMISSION from the husband of the lady he slept with.

Jagdish (Mumbai)

26 Sep, 2012 09:26 PM

"A married man can commit adultery with impunity if his partner is an unmarried woman, divorcee or widow. In the event of adultery with a married woman, the man would be exempt from punishment if he had committed it with the consent of her husband. A married woman is conferred even greater immunity as she can commit adultery with any man, irrespective of his marital status, without any criminal liability to herself." Law is dangerous, Man has not left to do anything, and women are free to fulfill her libido.

dineshkr.nayan (Lucknow)

26 Sep, 2012 05:15 PM

Yes, Law is made by few learned and wise people whereas our society is largely religious, prejudiced and ignorant. Politicians have played an important role to transform the society but they don't wish to do at the cost of their votes...

mecontact27 (Mumbai)

26 Sep, 2012 05:05 PM

Society needs to undergo a BIG change in this topic. As society constitutes you and me, i think we should read, understand and change our thought process accordingly.

av (mumbai)

26 Sep, 2012 05:02 PM

Law in India accept that sex as a necessity and Our court says Denial of sex as a offence that can make reason for divorce than how can a paid sex be an offence?

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